

DIVORCE AND MARRIAGE IN NEW-YORK.

FEATURES AND WORKINGS OF AN INQUISITIOUS SYSTEM.

HOW IT IS VIEWED BY SUCH EMINENT LAWYERS AS CHIEF JUSTICE DAVIS, F. N. BANGS, F. R. COUDERT, H. B. TURNER, D. M. PORTER AND B. F. TRACY.

An investigation of the records of the courts in New-York City having jurisdiction in divorce proceedings for the last thirteen years has disclosed the fact that there has been for five years an astonishing increase in the number of decrees of absolute divorce granted. There is only one case for such a divorce under the statutes of the State, and the decrees, in harmony with the law, prohibit the guilty party in the case from marrying again within the life-time of the injured party. Under rulings of the Court of Appeals such marriages are valid, however, if contracted in other States, and it has been discovered that in many cases persons have contrived to have decrees entered against them in order that they might re-marry. Other causes have operated under the prevailing system to increase the number of absolute divorces and disgraceful marriages, chief among them being the secrecy with which trials are conducted.

These facts have caused consternation and alarm among persons who are brought frequently face to face with the law and its results. To obtain the views of men learned in the laws and interested in the preservation of social morality, THE TRIBUNE has sent its reporters to eminent judges and lawyers, with instructions to obtain from them their judgments on the workings of the present law as laid down in the statutes and construed by the highest tribunal of the State. The result of these inquiries and the discoveries of the records and law books are given in the appended articles. Beginning with Chief-Justice Davis, these men, with hardly an exception, speak severe criticism against the law and recommend a reform. The views of Chief-Justice Davis, a brother judge, Francis N. Bangs, Frederic R. Coudert, Herbert B. Turner, D. M. Porter and Benjamin F. Tracy are given.

THE LAW AND ITS RESULTS.

GREAT INCREASE IN NUMBER OF DECREES—FEATURES OF DIVORCE LAWS.

Of late there has been a startling increase in the number of divorces granted in the courts of New-York City. As many decrees of divorce have been entered in the offices of the three courts that have jurisdiction in such cases during the last five years as in the preceding eight. In each case the number was about 1,400. Especially has the increase been startling since the summer of 1881. The total number in 1880 was 218; in 1881 it was 253; in 1882 it was 316; and the number of decrees already entered up to September of this year is 215. Inasmuch as the number of applications during the summer vacation is extraordinarily large, and the most of these are still before referees or not tried, the entire number for this year promises to foot up more than 400—or about twice as many as were ever granted in any year preceding 1879. Following is a tabulation of the number of divorces that have been obtained in each of the three courts—the Supreme, Superior and Common Pleas—from 1870 to September 1, 1883, with the totals for each year:

Years.	1870	1871	1872	1873	1874	1875	1876	1877
Supreme	109	89	72	83	122	96	79	106
Superior	70	70	47	27	29	43	54	38
Com. Pleas	33	33	47	27	29	43	54	38
Total	212	192	166	137	180	169	147	182

Years.	1878	1879	1880	1881	1882	1883 to Sept. 1.
Supreme	92	160	178	182	202	174
Superior	31	14	18	29	33	15
Com. Pleas	31	14	18	29	33	15
Total	154	188	214	241	268	204

ONE CAUSE FOR THE INCREASE.

The apparent cause for this increase is several. Doubtless one of the most marked is the comparatively recent decisions of the Court of Appeals of this State, which practically remove all restraint upon the subsequent marriage of persons against whom decrees of divorce have been granted for their acts of infidelity. The case of Van Vorhis vs. Bruntall was argued in the Court of Appeals in March, 1881, and was decided in October of that year. The General Term in the Second District held in that case (as had the General Term in this city in the case of Marshall vs. Marshall, and the General Term of the Superior Court in Thorp vs. Thorp, and as had most of the judges of the State before whom the question had come at Trial Term) that a person against whom a decree of absolute divorce had been granted could not anywhere contract a marriage that would be recognized as valid in this State during the lifetime of the person who obtained the decree. The question came before the Court of Appeals for the first time in the Van Vorhis case. The appellate court reversed the holdings of the courts below, and held that a marriage valid in the place where contracted must be considered valid here, notwithstanding any provision in the statutes of this State declaring that no such divorced person could marry during the husband's or wife's lifetime. This proposition was reaffirmed and strengthened by the decision of the same court last year in the case of Thorp vs. Thorp. The practical effect of this decision is that a person divorced for his own misconduct to-day can tomorrow step over into New-Jersey or Connecticut where there is no such restriction, and there marry the woman whom he takes with him for that purpose; when he returns to this State, the courts are bound to hold that this marriage, which the State law and the decree of the court had forbidden him to make, is valid, and that that decree is illegitimate. The Court of Appeals sustains this apparent inconsistency on the broad principle that no law can be so extended as to have an "extra-territorial" force unless its provisions, in terms, distinctly prescribe that it is to have such effect. But the court intimates that a law might be framed, analogous to the one to prevent duelling, that would follow the guilty divorced party out of the State and on his return to this State with his new wife.

The obvious effect of these decisions has followed. Before 1881 the severity of the divorce laws had been so firmly maintained in this State that there were few countries in Europe and scarcely any States in America where the marriage tie could not be more easily broken. But for unprincipled married persons who wish to be free from their present domestic alliances all restraint except that of public opinion is now practically removed. A man or woman of this description can commit a flagrant act of infidelity that will be brought to the knowledge of the husband or wife, as the case may be, who will thus be forced into seeking the redress which the offending party is anxious should be obtained. When the facts are laid before the court the judge is bound to grant the divorce—there is no collusion apparent and the guilt is plain. As soon as the decree is signed the guilty individual can ride in an hour or less into another State with an other, and marry, and the new consort will occupy the same position in the eyes of the law as did the innocent one who has thus been wronged. Then when the new wife becomes irksome the same operation may be repeated, as so often happens.

SECRET TRIALS AND DETECTIVES' EVIDENCE.

Another source of divorce multiplication, and one that existed quite as actively before the Van Vorhis decision, is the secrecy with which decrees are obtained. This springs from the idea in the minds of many judges that the divulging of the prurient details of domestic trouble and marital infidelity before those who crowd into court-rooms to listen to such tales would have a demoralizing effect. This idea, too, is strengthened by the wish of lawyers to keep the facts in regard to their clients' cases away from public knowledge. Therefore the most of such causes are tried in the secluded offices of lawyers appointed as referees, and neither the public nor newspaper reporters know of the time or place of such hearings. Moreover, the judges make the most stringent rules, which are binding upon the clerks, forbidding them to allow the evidence in divorce cases filed with them to be made public. The unscrupulous lawyers, therefore, who advertise that they will obtain a divorce for any man or woman, are generally able to make good their promises in that respect. The same men have other methods to aid them in their discreditable work. Chief, and one of the worst, among these is the detective system. No home is safe from its invasion. Given a certain class of detectives, who carry on their business in this city, a statement of the facts which it is desired shall be proven before a referee or to almost any individual in the community, and give them, also, the big fees which they will demand, and the testimony will be forthcoming.

Little, if any, blame can be laid upon the shoulders of the referee. In the most dangerous classes of cases—either those where the divorce is sought without the knowledge of, or service being made upon, the defendant, or where the same is collusion—there is no one to cross-examine the evidence, or to make any investigation of the truth of the statements made by them. The detectives may, therefore, tell almost any story with impunity. The referee can do little more than record the evidence and pass upon the question whether it furnishes

sufficient proofs of the facts alleged; and if it does, to find for the plaintiff. The question of "evidence" is a serious matter; and although the courts are stringent in the proof they require on this subject, the requirements are frequently evaded. A woman came into the Clerk's office of the Supreme Court a few days ago, and said, with some perturbation, that she lived in New-Jersey, and had not seen her husband for a long time; but that she had just learned that a divorce had been granted to him in that court, although no notice of the granting of the divorce came to her knowledge during its progress. A clerk looked up the records, and there, truly enough, was the entry of the decree made several months previous. This is a very common case, and the instances where service is made "by publication," and the defendant remains entirely ignorant of the proceedings until they are ended. Referees may scrutinize the testimony of the parties, and the judges may re-examine it with the greatest care without picking any flaw in what is often a tissue of fraud. No flagrant case has been heard at times that one of the Justices of the Supreme Court has been driven to suggest as a remedy that the judges themselves, in instances where they have reason to suspect chicanery, should have power to send out detectives to investigate the matter. It is sometimes said that the fact that the payment of the fees of a referee will often depend upon his favorable decision in an uncontested divorce case has a weight with him in making his report; but it may fairly be answered that the character of the men who ordinarily are selected as referees places them above the suspicion of such a rebroach.

LACK OF UNIFORMITY IN DIVORCE LAWS.

Another of the universally recognized sources of evils of this character arises from the great diversity of divorce laws in the various States. The variety is almost as great as the number of States; the scale runs, on the one hand, from the laws of such States as North Carolina and Texas, where a wife cannot obtain a divorce for a clearly proven act of infidelity on the part of her husband, but where she must prove that he has been "living in adultery," to the laws of such States as New-York, where a wife may obtain a divorce for a single act of adultery, and where, recently, the courts must grant divorces where they deem it "reasonable and proper," or in Maine, where the matter is still left to the discretion of the court. In New-Jersey and Maryland, adultery and desertion are the only causes for absolute divorce arising subsequent to marriage. In California, Colorado, Florida, Kansas, Missouri and Wisconsin, a husband's desertion for a year, or a wife's desertion for one year, is ground for absolute divorce. In seven other States the time is two years; in thirteen others it is three years. In Louisiana, Kentucky and Virginia, it is five years. In New-York and several other States desertion is ground for partial divorce only, and in North Carolina and Pennsylvania it is not the basis of any divorce. In California, where a wife is granted to a man from a wife who has refused to move to that State with him.

There is equal variance in the question of cruelty as a cause of divorce. In Alabama and Kentucky this right exists only in favor of the wife. In Florida the "habitual exercise of a violent and unbecoming temper" is sufficient ground. In Maryland a person is freed from union with his husband or wife convicted of a felony. In seven of the States habitual drunkenness continued for one year is ground for divorce. In Rhode Island it is the habitual drunkenness of the husband for a year, or in New-Hampshire and Ohio it is three. Refusal to provide for a wife is made ground for divorce, either partial or absolute, in several States. Inasmuch as the timing of the marriage is the ground for annulment in most of them, in Kentucky the issue of a marriage dissolved for mental incapacity is legitimate; in Rhode Island they are legitimate, and in New-York they are legitimate inasmuch as the ground that her husband is a "vagrant." From 1849 to 1878 the courts of Connecticut were empowered by statute to grant divorces for "any cause," and in that State, during the happiness of the petitioner and defeating the purposes of marriage. In Rhode Island, Maine and Kentucky the law is scarcely more definite. In New-York, where a divorce can be obtained for any cause, in 1878 the Legislature repealed all acts and parts of acts relating to divorce. There are few States where a divorce can be obtained for any cause. In Georgia no absolute divorce can be granted except upon the verdict of two special juries. In Kentucky "a jury shall not be empanelled as a condition for divorce, alimony or maintenance."

Among the laws regulating marriage several of the States forbid alliances between persons of different bloods. In New-York, where laws have appeared at various times upon the statute-books of seven or eight of the States. Many of the States also regulate the age at which persons may marry. In New-York it is one state, and in the majority of the States a common law requirement that the parties be respectively fourteen and twelve years of age, except the enactment that a woman marry under the age of sixteen years with the consent of her father, mother or guardian such marriage is voidable. A number of the States fix various other ages. There are several other grounds for the annulment of a marriage in New-York, but absolute divorce is granted only on the ground of adultery. A partial divorce or a "separation" may be granted for cruel or inhuman treatment; such conduct, in the part of the offending party as renders it unsafe or improper for the other to live with him or her; abandonment, and where the wife is plaintiff, neglect or refusal of the husband to provide for her.

This difference between the laws of the various States leads to endless complications, particularly arising where a married person has been divorced by one State into another; or where they change their places of residence to evade some laws or to seek the privileges accorded by others. A prominent lawyer of this city is now working for a married person, who is a resident of New-York, who has been divorced by a New-York court, and who is now in another State, and who is seeking to secure one here. He took a summer home in one of its pleasant towns, and so acquired a residence there, and he is now coming to his business in New-York. There is upon the calendar of the Supreme Court, Special Term, the case of a woman who is suing for divorce from her husband, who has been divorced by a New-York court, and who is now in another State, and who is seeking to secure one here. 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